



# Tennessee County Services Association

Representing Tennessee's County Executives, County Highway Officials, and County Commissioners since 1954

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## COMMENT TO THE FEDERAL COMMUNICATIONS COMMISSION REGARDING THE PREEMPTION OF STATE AND LOCAL ZONING AUTHORITY OVER THE SITING OF BROADCAST TRANSMISSION FACILITIES

TO: Office of the Secretary,  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

OCT 30 1997

FROM: Tennessee County Services Association  
Tennessee County Commissioners Association  
Tennessee Association of County Executives

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These organizations represent the elected officials of all ninety-five counties in the state of Tennessee and serve to speak as the collective voice of those governments at the state and federal level. As the directors of these three organizations, we offer the following in response to the request of the Federal Communications Commission for comment regarding a proposed rule to preempt local zoning regulation over the siting of broadcast transmission facilities.

While we recognize the authority of the Federal Communications Commission to regulate broadcast transmissions in the United States, we feel that the proposed preemption rule is overly broad, unnecessary to accomplish the stated objective of facilitating the rapid deployment of Digital Television, and entirely insensitive to local concerns regarding the impact of the siting of broadcast facilities.

### **The Rule is Overly Broad**

The radio and television industries are using the accelerated deployment of Digital Television as an excuse to eliminate any need for industry co-operation with state and local governments. On the basis of anecdotal evidence of a few negative experiences with zoning delays, the industry has requested that the FCC, with a single stroke of the pen, do away with the local authority to provide effective zoning and planning for our nation's communities. At a minimum, this preemption should apply only to the construction of those towers necessitated by the accelerated deployment of digital television, should only apply in those markets involved in the first stage of deployment, and should only preempt state and local regulations which have been demonstrated to actually *prevent* the industry from meeting the deadlines set by the FCC. It would be a travesty if local authority to regulate land use were eliminated solely to make the deployment of Digital Television more convenient or less costly to the industry.

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## **Unreasonable Procedures**

### **Point one - Time Frames are Unreasonable**

The time frames established for government response in the proposed preemption rule are unreasonable and burdensome. Many planning or zoning commissions meet only on a monthly basis. Requiring response within 21 days could, in many circumstances, require emergency meetings of the boards and commissions. Even the less brief 30 and 45 day deadlines would prevent a local commission from anything other than the most cursory examination of zoning requests. In cases where there truly is a demonstrable health and safety need to deny the permit, the limited time frame would effectively prohibit a state or local government body from documenting the evidence necessary to support the denial. Considering that the deadlines for the rollout of digital television are over four years away for all but the largest markets, these ridiculously accelerated schedules are even more unreasonable.

### **Point Two - Arbitration in Washington Defeats Local Governments**

Requiring arbitration before the Federal Communications Commission effectively eliminates local zoning authority. Only the largest local governments have the resources and staff to conduct arbitration before the FCC in Washington, D.C. If the Commission preempts local judicial review of zoning regulations, local county and city governments will lose by default because they do not have the funds, which are readily available to business and industry to hire representatives in Washington, to defend their zoning and regulatory decisions. Local governments have limited resources and are constantly challenged to continue to provide important services for the health, safety, education, and welfare of their citizens. They do not have extra revenues to spend on hiring legal representation in Washington.

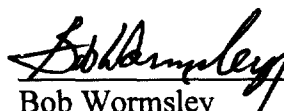
## **The Need for Local Land Use Regulation**

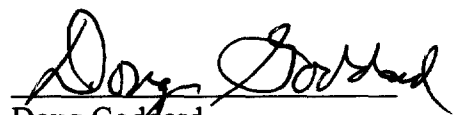
State and local governments carry the burden not only of protecting the health and safety of their residents, but also of protecting the aesthetic and economic well-being of their communities. While the FCC is better suited to determine the necessary regulations to insure the safety of radio frequency transmissions, local governments are better suited to determine the proper zoning and land use issues to maintain economic growth and aesthetic value in their communities. The proposed rule in no way takes into account the importance of planning and zoning in protecting the economic well-being of communities. Cellular telephone towers are already rapidly multiplying across our landscape. To say the least, these towers are not aesthetically pleasing and have the effect of diminishing the property value of nearby homeowners. Now the rollout of digital television may increase the number and size of radio and television towers in our communities. Without some ability to regulate the placement of these facilities, local governments will be unable to encourage co-location of towers, or the location of towers in places where their presence will not damage local property values or diminish the possibility of economic growth. Surely the economic concerns of local homeowners and neighborhood associations are as valid as the industry's concerns for ease of tower re-location.


By its proposed rule, the industry demonstrates that it has no concern for historic preservation, aesthetics, or economic development in our nation's communities. While the FCC has stated that it is cognizant of those concerns in its request for comment, surely it realizes the inability of the

Commission to effectively protect those local resources. State and local governments should retain the ability to carry out that responsibility. The authority of local governments to effectively zone property use and plan for the development of its communities should not be abolished simply because of a perceived inconvenience that "might" be an obstacle to the rollout of Digital Television. We are entirely opposed to the proposed rule of the petitioners to preempt local and state zoning regulation of broadcast facilities.

Sincerely,

 10/28/97  
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